

COUNCIL MINUTES  
TIGARD CITY COUNCIL MEETING  
SEPTEMBER 13, 2005

Mayor Dirksen called the meeting to order at 6:31 p.m.

Council Present: Mayor Dirksen; Councilors Sherwood, Wilson, and Woodruff.

- STUDY SESSION

- > BRIEFING ON MANAGEMENT GROUP COST OF LIVING (COLA) AND COMPENSATION

Human Resources Director Zodrow and Legal Counsel Bemis reviewed with the City Council how compensation is set for City of Tigard employees. Council and staff also discussed a cost of living adjustment for management/professional employees. Human Resources Director Zodrow reviewed COLAs granted in other Oregon cities. Mayor Dirksen noted that City Manager Prosser's contract is on the business meeting agenda for consideration. If the contract is approved and a COLA is awarded to the Management/Professional group, then the City Manager will also receive the COLA.

After discussion and questions to staff, the Council consensus was for staff to present a request for a 2.3% adjustment on the September 27, 2005, City Council consent agenda.

- > DISCUSSION OF COUNCIL RETREAT

The retreat has been replaced by a training session, which will be held September 30, 2005.

- > ADMINISTRATIVE ITEMS

- ☒ Receive and File – Fifth Tuesday Meeting Notes – August 30, 2005
    - ☒ City Attorney submittal of revised findings (distributed) – Agenda Item No. 6. Changes were noted for Item Nos. 6 and 16. City Attorney Ramis told the City Council that late today the staff had advised the City Attorneys the status of one of the subdivisions is different from the others so an adjustment was made to the findings. Mr. Ramis advised the revision is not central to the basis of Council's decision. Councilor Woodruff asked if it would be grounds for another delay. Mr. Ramis said, "No," but if the staff were to put new evidence into the record and respond to it, "yes." Mr. Ramis said the better way to deal with it is to

recognize that it is not central to the decision, so he recommended taking out references to it to make it correct. Mr. Ramis said that the record does not need to be changed to amend the findings. In response to a question from Mayor Dirksen, City Attorney Ramis advised that this does not have anything to do with the consent to annex or the annexation because testimony was given by the applicant that he voluntarily is seeking annexation, which trumps any of those issues.

- ☒ Written Testimony for Agenda Item No. 7 – Measure 37 Waiver Hearing – September 7, 2005, letter from Charles T. Wilson distributed to the City Council.
- ☒ Rules of procedure for the Measure 37 claim hearing was distributed to the City Council. The City Attorney reviewed these rules during the hearing (Agenda Item No. 7).
- ☒ Date for the Joint Tigard-Tualatin School District and City of Tualatin Meeting was set for October 7. City of Tualatin will host. City Council members were asked to submit agenda item ideas.
- ☒ Reminded City Council of the League of Oregon Cities Conference, November 10-12 – Hilton Eugene & Conference Center. The theme this year is: "Cities: Leaders Live Here." Mayor Dirksen and Councilors Sherwood and Woodruff will attend.
- ☒ Jillian Walker will give the Tigard Student High School Student Envoy Report (Krista Foltz is unable to attend) – See Agenda Item 3.
- ☒ Council received information on the shooting simulation machine.
- ☒ Reminded City Council of dinner with the Indonesian Delegation, September 26, 2005, 6:30 p.m., Hunan Pearl Restaurant
- ☒ This is Rob Williams last meeting as the Tigard Youth Advisory Council President. See Agenda Item 1.4 – presentation by the Mayor to President Williams.
- ☒ City Manager Prosser noted there are problems with issuance of visas for some members of the Indonesian delegation; several individuals will not be able to make the trip to Tigard as planned.

#### Council Calendar:

##### **September**

11-18	Sun-Sun	Family Week Celebration
13	Tuesday	Council Business Meeting – 6:30 pm, Town Hall
20	Tuesday	Council Workshop Meeting – 6:30 pm, Town Hall
22	Thursday	Citizen Leadership Series – 9 Sessions, Thursday evenings
26	Monday	Indonesian Delegation Dinner – 6:30 p.m., Hunan Pearl
27	Tuesday	Indonesian Delegation Reception – 5:30 p.m. – Library Community Room
27	Tuesday	Council Business Meeting – 6:30 pm, Town Hall
30	Friday	Council Training Session – Noon, 10305 SW 87 <sup>th</sup> Avenue, Tigard, Oregon

- EXECUTIVE SESSION: The Tigard City Council went go into Executive Session at 7:06 p.m. to consult with counsel about current or potential litigation under ORS 192.660(2) (h).

Executive Session concluded: 7:23 p.m.

1. BUSINESS MEETING

- 1.1 Mayor Dirksen called the City Council & Local Contract Review Board meeting to order at 7:30 p.m.
- 1.2 Council Present: Mayor Dirksen; Councilors Sherwood, Wilson, and Woodruff.
- 1.3 Pledge of Allegiance
- 1.4 Council Communications & Liaison Reports

- ☒ Mayor Dirksen presented a gift and certificate of appreciation to Tigard Youth Advisory Council President Rob Williams. President Williams's term of office is ending and his successor will be appointed soon.

- 1.5 Call to Council and Staff for Non-Agenda Items: None

2. PROCLAMATIONS

- Mayor Dirksen issued the following proclamation:

- 2.1 Proclaim September 17 to 23, 2005 as Constitution Week

3. CITIZEN COMMUNICATION

- Tigard High School Student Envoy Representative Jillian Walker gave an update on Tigard High School activities.
- Mark Padgett recommended City Council consider changing the membership for Planning Commission. He recommended membership be limited to Tigard residents or property owners citing the recent information that Washington County was changing its policy for planning in areas of interest. Currently the rules allow for two non residents to serve on the Planning Commission. He further recommended that the current Planning Commissioner residing outside of the City limits be "grandfathered" to serve until the end of the term.

Councilor Wilson and Councilor Woodruff noted they would expect further information on the County's position regarding planning in the area of interest.

There was discussion on Mr. Padgett's proposal about changing the membership rules for the Planning Commission. In response to a question from Councilor Sherwood, Mr. Padgett said the City Council might want to consider limiting membership to all Boards and Committees to Tigard residents. There was discussion on a CPO4B subcommittee formed to review governance options for the Bull Mountain area. City Manager Prosser clarified that CPO4B includes a large

portion of incorporated City of Tigard. Mayor Dirksen also said he agreed with Councilor Woodruff and Councilor Wilson in that he hoped discussions would still be ongoing with the County about planning responsibility for some of the unincorporated areas near Tigard.

- Gretchen Buehner noted her concern that the joint meeting with the Tualatin Council and the Tigard-Tualatin School District was scheduled once again on a Planning Commission meeting night. Mayor Dirksen said that when Tigard is hosting the meeting, City Council will avoid scheduling on the same night as Planning Commission. Tualatin is hosting the next meeting and they have scheduled the meeting for one of their regular meeting times. Ms. Buehner also requested that a sign be posted in Town Hall requesting that cell phones be turned off. Mayor Dirksen indicated he thought this was a good idea. Ms. Buehner referred to Mr. Padgett's suggestion about Planning Commission membership. She recalled that originally non residents were allowed to serve on the Planning Commission if they were business owners in Tigard.
- Cynthia Osborne, Rich Carlson, Margaret Ellenson, and Diane Wiering noted the skate boarding event last Saturday and the supporters who turned out. They urged that Tigard move forward with the skate park.
- Alice Ellis Gaut requested Item 4.6 be removed from the Consent Agenda for separate discussion. She also read information from John Frewing about "Fanno Creek Buffer Violation," which related to Consent Agenda Item No. 6. (A copy of Mr. Frewing's statement is on file in the City Recorder's office.)
- Follow-up on Previous Citizen Communication – City Manager Prosser:
  - Several citizens requested protection and retention of the Gage property for greenspace in the Bond Park neighborhood. The property owners have indicated they are not interested in selling the property to the City.
  - Ron Ellis Gaut spoke of his issues regarding the City's pursuit of a railroad crossing. He received a response at the meeting.
  - George and Betty Burke presented City Council with information about a code compliance issue with their property. City Manager Prosser noted progress is being made.
  - Connie Raemakers and Elizabeth Peloquin appealed to the City Council and community for support for the Skate Park.
- Follow-up on Fifth Tuesday Meeting
  - Sewer extensions were a discussion topic. City Manager Prosser noted staff has contacted these citizens.
  - Zoning issues were noted; no follow up.
  - Skate park support requested.
  - Verizon construction activity concerns noted. City Council will be receiving follow up information on Friday.
  - Play structure at library requested; no follow up.

Tigard Youth Advisory Council President Rob Williams reviewed the Consent Agenda as noted below. Item 4.6 was removed for separate consideration.

4. CONSENT AGENDA:

- 4.1 Approve Council Minutes for August 9 and 16, 2005
- 4.2 Receive and File:
  - a. Council Calendar
  - b. Council Meeting Tentative Agenda
- 4.3 Approve Budget Amendment #1 to the FY 2005-06 Budget to Increase Appropriations in the Water, Water CIP, and Water SDC Funds for Funding of Certain Capital Water Projects – Resolution No. 05 – 55

RESOLUTION 05- 55 – A RESOLUTION TO APPROVE BUDGET AMENDMENT #1 TO THE FY 2005-06 BUDGET TO INCREASE APPROPRIATIONS IN THE WATER, WATER CIP, AND WATER SDC FUNDS FOR FUNDING OF CERTAIN CAPITAL WATER PROJECTS

- 4.4 Approve Budget Amendment #2 to the FY 2005-06 Budget to Carry Over Funds in the Public Works Program for Replacement of Vehicles – Resolution No. 05 – 56

RESOLUTION 05-56 – A RESOLUTION APPROVING BUDGET AMENDMENT #2 TO THE FY 2005-06 BUDGET TO CARRY OVER FUNDS IN THE PUBLIC WORKS PROGRAM FOR REPLACEMENT VEHICLES

- 4.5 Approve Budget Amendment #3 to the FY 2005-06 Budget to Increase Appropriations in the Street Maintenance Division Budget for Purchase of a Sign Plotter and Computer – Resolution No. 05 – 57

RESOLUTION NO. 05-57 – A RESOLUTION TO APPROVE BUDGET AMENDMENT #3 TO THE FY 2005-06 BUDGET TO INCREASE APPROPRIATIONS IN THE STREET MAINTENANCE DIVISION BUDGET FOR PURCHASE OF A SIGN PLOTTER AND COMPUTER

- 4.6 (See discussion and separate consideration below.)
- 4.7 Authorize the City Manager to Relinquish Temporary Emergency Turnaround Easements at Arbor Pointe Subdivision
- 4.8 Approve the Submission of an Application for a Washington Square Mall Buffer Zone Protection Plan Grant

- 4.9 Adopt the National Incident Management System as the Foundation for Incident Command, Coordination, and Support Activities and Establishing Policy that Will Provide Training for Responsible City Personnel – Resolution No. 05 – 58

RESOLUTION NO 05-58 – A RESOLUTION ADOPTING THE NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS) AS THE FOUNDATION FOR INCIDENT COMMAND, COORDINATION, AND SUPPORT ACTIVITIES AND ESTABLISHING POLICY THAT THE CITY OF TIGARD WILL PROVIDE APPROPRIATE NIMS TRAINING FOR RESPONSIBLE CITY PERSONNEL

- 4.10 Local Contract Review Board:
- a. Award a Contract for the Construction of the SW Ash Avenue Sanitary Sewer (Sewer Reimbursement District No. 35) to NW Kodiak Construction, LLC

Motion by Councilor Wilson, seconded by Councilor Sherwood, to approve the Consent Agenda, except for Item 4.6, which was removed for separate consideration.

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff	Yes

Council discussed Consent Agenda Item 4.6:

- 4.6 Amend the November 14, 2002 License Agreement for Maintenance of the Fields Property East of the Library Site

It was noted that the access issue on the Fields' property has a long history. The granting of access is part of a commitment by the City to Mr. Fields in an agreement entered into between these two parties at the time Mr. Fields sold property to the City for the library. In the agreement, this access is restricted to certain time periods and is provided so Mr. Fields can perform maintenance on his property, i.e., mowing equipment for fire hazard prevention. City Engineer Duenas, in response to a question from Councilor Wilson regarding the term of the agreement, advised that staff is recommending that the agreement be extended until such time as Mr. Field acquires access through Metro-owned property or until a road is built, which provides access to his property.

Motion by Councilor Wilson, seconded by Councilor Sherwood, to approve Consent Agenda Item No. 4.6.

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff	Yes

5. INDONESIAN RESOURCE CITIES EXCHANGE REPORT

Library Director Barnes, Durham Elementary School Teacher Davies, Clean Water Services Water Resources Manager Vanderplatt reviewed their recent trip to Indonesia. The cities of Samarinda and Balikpapan have made substantial progress on their pilot water audit program. In addition, lesson plans and curriculum were presented to teachers, which related to the conservation of water and protection of the environment. City Manager Prosser noted that travel costs are funded by USAid. A delegation of the two cities is scheduled to come to Tigard September 24-30, 2005, which will be the last delegation to visit as a part of this program. To wrap up the program, A Best Practices Conference will be held in Indonesia in December.

6. *Continued from the August 23, 2005, City Council meeting –*  
CONSIDERATION OF THE FINAL ORDERS REGARDING THE  
ANNEXATION OF THE FOLLOWING FOUR PROPERTIES:

FILE NO.:	ZONE CHANGE ANNEXATION (ZCA) 2004-00004
FILE TITLE:	MOUNTAIN VIEW ESTATES SUBDIVISION ANNEXATION
REQUEST:	The applicant is requesting to annex two (2) parcels of land containing 6.94 acres into the City of Tigard.
LOCATION:	12415 SW Beef Bend Road, WCTM 2S110CB, Tax Lot 500; and (No site address), WCTM 2S110CB, Tax Lot 100.
FILE NO.:	ZONE CHANGE ANNEXATION (ZCA) 2005-00001
FILE TITLE:	ARLINGTON HEIGHTS 3 SUBDIVISION ANNEXATION
REQUEST:	A request to annex three (3) parcels of land containing 16.97 acres into the City of Tigard.
LOCATION:	On the north side of SW Beef Bend Road and the southern terminus of SW Summerview Drive. WCTM 2S109DA, Tax Lot 2100; and 2S110CB, Tax Lots 600 and 700.
FILE NO.:	ZONE CHANGE ANNEXATION (ZCA) 2005-00002
FILE TITLE:	WILSON RIDGE SUBDIVISION ANNEXATION

REQUEST: A request to annex two (2) parcels of land containing 2.68 acres into the City of Tigard.

LOCATION: 13350 and 13400 SW Bull Mountain Road; WCTM 2S109AC, Tax Lots 100 and 200.

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FILE NO.: ZONE CHANGE ANNEXATION (ZCA) 2005-00003

FILE TITLE: ALBERTA RIDER SCHOOL/SUMMIT RIDGE SUBDIVISION ANNEXATION

REQUEST: Annexation of 56 parcels containing approximately 20.75 acres into the City of Tigard.

LOCATION: Alberta Rider School: WCTM 2S109AC, Tax Lot 2100 and 2S109AD, Tax Lot 1300; and Remaining Portions of Summit Ridge Subdivision: WCTM 2S109DA, Tax Lots 8500, 8600, 8700, 8800, 9400, 9500, 9600, 9700, 9800, 9900, 10000, 10100, 10200, 10300, 11500, 11600, 11700, 11800, 11900, 12000, 12100, 12200, 12300, 12400, 12500, 12600, 12700, 12800, 12900, 13000, 13400 and 13500, and WCTM 2S109DB, Tax Lots 1000, 1900, 2100, 2200, 2300, 2400, 2500, 2600, 2700, 2800, 2900, 3000, 3100, 3200, 3300, 3400, 3500, 3600, 3700, 3800, 3900 and 4000.

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**ZONING OF ALL PARCELS:** R-7: Medium-Density Residential District. The R-7 zoning district is designed to accommodate attached single-family homes, detached single-family homes with or without accessory residential units, at a minimum lot size of 5,000 square feet, and duplexes, at a minimum lot size of 10,000 square feet. Mobile home parks and subdivisions are also permitted outright. Some civic and institutional uses are also permitted conditionally.

**APPLICABLE REVIEW CRITERIA:** The approval standards for annexations are set out in Community Development Code Chapters 18.320 and 18.390, Comprehensive Plan Policies 2 and 10; ORS Chapter 222; and Metro Code Chapter 3.09.

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Mayor Dirksen announced this agenda item.

City Attorney Ramis advised that the City Council had before it a draft final decision. He advised that the Council received a substituted version of the final decision with some slight changes in language. He advised the Council will need to make separate motions on each of the proposed annexations. The supporting findings are the same for each annexation as the City held a combined hearing.



Mayor Dirksen reminded those present that the public hearing is closed. Opportunities were given for oral testimony and written comments for which the time period had been extended and is now passed. All City Council members present indicated they reviewed the information presented to them and were ready to discuss and consider these annexations.

Councilor Wilson suggested that all the annexations be discussed together. City Attorney Ramis confirmed it would be appropriate to discuss the annexations together, but the motions on each should be considered separately.

Council discussion followed.

Councilor Woodruff said this has been controversial since before the vote on Bull Mountain. He acknowledged that some people feel very passionate about the annexations and he respects their ability to make their view known. He noted this is a public process. Councilor Woodruff said he has read all the testimony and staff and attorney responses. He said that decisions need to meet certain criteria and those are:

- Is it legal; does it meet Oregon statutes and Tigard ordinances?
- Does it make sense?
- Is it consistent with Tigard and other jurisdictions?
- Is it in the best interest of the residents of Tigard?

Councilor Woodruff advised that the annexations before the City Council tonight meet all of those criteria. He said that this is not anything new as the City has done business this way as do most of the jurisdictions throughout the state: When parcels become available adjacent to a City boundary, those parcels are annexed and become a part of the City. He acknowledged testimony of some people who thought there was some conspiracy going on and the City had some kind of plans that "We were going to do something scurrilous that was going to result in us annexing all of Bull Mountain against everyone's will. And, I can assure you that there is no conspiracy process underway here. This is nothing new...we would be doing the same process we're doing here if this was a parcel on the other side of Tigard." He noted the time and energy devoted by everyone and said he was ready to move ahead.

Councilor Sherwood said she concurred with Councilor Woodruff's comments. She said that the City was not doing anything different than what it had been doing for years. She said that she read through all the information presented and she agreed that there is no reason for not annexing in that the City would not be making islands, would not be annexing Beef Bend Road, and would not be annexing Bull Mountain

Road. Owners of these properties have asked to be annexed. She said she saw no reason not to proceed with the annexations.

Councilor Wilson said that over the course of the hearings a lot of testimony was heard by the City Council. He said it was similar to the testimony heard in opposition to the Annexation Plan, which was considered last November. These properties are being proposed to be annexed under ORS 222, which is not the same as the Annexation Plan, which was under ORS 195. The criteria for ORS 222 are simple in that you have to have consent of all of the property owners and 50 percent of the electors who live in the district. In these cases, consent has been given by every one of the owners and also every one of the electors. The criteria, clearly, has been met. The City has the authority to annex the territories. However, this does not necessarily mean the City should annex. He said that it was important at this juncture to articulate a clear policy as to why it is in the interest of the citizens of Tigard to annex them. Councilor Wilson said that, for him, it has always been fundamentally not about acquiring new territory or for control, but it has always been about provision of urban services and how those services get paid for. He said, "In short, it's about money." He advised that he often likens the City to a large homeowners association where we elect to provide services for ourselves and each of us pays our dues. We have a neighboring association that uses our facilities and does not pay for them. He said that he has always felt that that inequity needs to be corrected. As long as there are territories that are urban next to cities, it will be a problem. He said that if you look at the City of Tigard's Budget, the City collects about \$10 million in property taxes each year. Of the property taxes collected, \$9 million is used to fund the Police Department. The City also spends General Fund money maintaining parks. The third General Fund item is the Library, which is about \$2.5 million. One-half of the Library operation is funded through the County and the other half is funded through property taxes. Councilor Wilson said that with regard to police, which is the big ticket item, he said that every citizen in cities pays the County for Sheriff Patrol, but the Sheriff Patrol does not patrol the cities. In essence, the cities are subsidizing police services in the unincorporated portions of the County. If the County was to fund the one-half officer per thousand residents in the City that it funds in the County, then the City of Tigard could cut its property taxes by one-third. Councilor Wilson said that as long as this inequity exists, then he supports annexation and he supports the proposed annexations also.

Mayor Dirksen said that he heartily agreed with the preceding remarks made by the Council members and said he had nothing to add.

City Attorney Ramis confirmed that the ordinance titles should be read upon City Council consideration.

Council consideration:

Ordinance No. 05 - 09 (Mountain Estates Subdivision Annexation)

Councilor Sherwood moved for adoption of Ordinance No. 05-09.  
Councilor Woodruff seconded the motion.

City Recorder Wheatley read the following:

Ordinance No. 05-09 -- An Ordinance Annexing 6.94 acres, approving Mountain View Estates Annexation (ZCA 2004-00004), and withdrawing property from the Tigard Water District, Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District

The motion was approved by a unanimous roll call vote of Council present:

Mayor Dirksen:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff	Yes

Ordinance No. 05-10 (Arlington Heights 3 Subdivision Annexation)

Councilor Woodruff moved for adoption of Ordinance No. 05-10, Arlington Heights 3 Subdivision. Councilor Sherwood seconded the motion.

City Recorder Wheatley read the following:

Ordinance No. 05-10 -- An Ordinance Annexing 16.97 acres, approving Arlington Heights 3 Annexation (ZCA 2005-00001), and withdrawing property from the Tigard Water District, Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District

The motion was approved by a unanimous roll call vote of Council present:

Mayor Dirksen:	Yes
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Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff	Yes

Ordinance No. 05-11 (Wilson Ridge Subdivision Annexation)

Motion by Councilor Wilson to adopt Ordinance No. 05-11. Councilor Sherwood seconded the motion.

City Recorder Wheatley read the following:

Ordinance No. 05-11 -- An Ordinance Annexing 2.68 acres, approving Wilson Ridge Annexation (ZCA 2005-00002), and withdrawing property from the Tigard Water District, Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District

The motion was approved by a unanimous roll call vote of Council present:

Mayor Dirksen:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff	Yes

Ordinance No. 05-12 (Alberta Rider School/Summit Ridge Annexation)

Motion by Councilor Sherwood to adopt Ordinance 05-12. Councilor Wilson seconded the motion.

City Recorder Wheatley read the following:

Ordinance No. 05-12 -- An Ordinance Annexing 20.75 acres, approving Alberta Rider Elementary School/Summit Ridge Annexation (ZCA 2005-00003), and withdrawing property from the Tigard Water District, Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District

The motion was approved by a unanimous roll call vote of Council present:

Mayor Dirksen:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff	Yes

7. PUBLIC HEARING (QUASI-JUDICIAL) TO CONSIDER AN ORDINANCE ADOPTING FINDINGS TO GRANT A BALLOT MEASURE 37 WAIVER OF THE R-25 ZONING RESTRICTIONS FOR A PROPERTY AT THE INTERSECTION OF SW SCHOLLS FERRY ROAD AND 135<sup>TH</sup> AVENUE

CLAIM:

The Claimant seeks a waiver and/or change in the underlying zoning and comprehensive plan designation on a 10.45 acre site from the present high-density R-25 residential zoning to C-C or C-G commercial zoning to allow a commercial shopping center, various tenants/uses, as well as retail sales, vehicle fuel sales and signage of the C-C or C-G commercial zone. The amount claimed as compensation without such waiver or change is \$4,562,360.00.

AFFECTED REGULATION:

Residential R-25 zoning; Comprehensive Plan designation as residential; Transportation System Plan and Development Code access restrictions; any other zoning and building code restrictions or overlay zones that preclude a commercial use; sign code restrictions.

LOCATION:

Lot 63, Hawk's Beard Townhomes; WCTM 1S133AC, Tax Lot 14500. On the south side of SW Scholls Ferry Road, between SW 130<sup>th</sup> and 135<sup>th</sup> Avenue.

ZONING DESIGNATION:

R-25: Medium High-Density Residential District. The R-25 zoning district is designed to accommodate existing housing of all types and new attached single-family and multi-family housing units at a minimum lot size of 1,480 square feet. A limited amount of neighborhood commercial uses are permitted outright and a wide range of civic and institutional uses are permitted conditionally.

APPLICABLE REVIEW CRITERIA:

Tigard Municipal Code Chapter 1.20.

- a. Mayor Dirksen opened the public hearing.
- b. City Attorney Ramis reviewed the Rules of Procedure. The text of these rules is on file with in the City Recorder's office.
- c. Declarations or Challenges

- Do any members of Council wish to report any ex parte contact or information gained outside the hearing, including any site visits? None reported.
  - Have all members familiarized themselves with the application? All members presented indicated they were familiar with the application.
  - Are there any challenges from the audience pertaining to the Council's jurisdiction to hear this matter or is there a challenge on the participation of any member of the Council? There were no challenges.
- d. The Staff Report was presented by Community Development Department staff. The text of the Staff Report is on file in the City Recorder's office.
- e. Public Testimony
- The applicant, represented by Mike Van, 3860 SW Boeckman Road, Wilsonville, OR 97070, spoke to the City Council in support of the staff's recommendation, but requested that the waiver (as outlined in the proposed ordinance) be permanent and run with the land. He said he would like to withdraw the Measure 37 claim with regard to access restriction. He noted he would agree to the CG zone requirements if the waiver is permanent and runs with the land. He said Measure 37 is moot on this point and believes it will be tested in court.
  - Note: Charles T. Wilson testimony received, which will be entered into the record.
  - Gretchen Buehner, 13249 SW 136<sup>th</sup> Place, Tigard, Oregon advised she is a resident and is also a real estate business attorney. She said she understands the City must waive the land use regulation or pay the landowner for reduced value of property due to a land use regulation. She noted her objections to allowing this parcel to be developed commercially citing the number of similar stores that have been built within a mile of this location. She also noted concerns with traffic congestion. She said the types of business that would be attracted to this site would not be in the best interests of Tigard.
  - Eric Winger, 11090 SW 131<sup>st</sup> Place, Tigard, Oregon, testified in opposition to a change in zoning citing the following:

1. Traffic congestion. He referred to a map and described current traffic conditions.
2. Sight distance concerns (relating to safe travel).
3. The proximity of wetlands and concerns about the presence of gas tanks.

Mr. Winger advised that the requested change would not be in the best interests of the community.

- Wade Longworth, 11056 SW 131<sup>st</sup> Place, testified regarding concerns on the impact this proposal would have on the Summerlake area and its natural resources: the creek, wildlife, and drainage.
- Lee Sherman, 10675 SW 133<sup>rd</sup> Place, Beaverton, OR 97008, testified he has lived at this address for ten years and during that time, there has been a significant increase of traffic on Scholls Ferry Road. He advised of his concerns with the proposed changes with regard to how it would impact traffic flow. He reviewed rezoning concerns and said he was disappointed the owner was not here and noted that the owner lists his address as Clackamas. He said he was opposed to rezoning this property from residential to commercial. He said he would not want to see another strip mall. He cited the City Council goal for seeking parks and open space, which would be a better use of this land. He referred to current businesses located in the area, including a daycare/preschool and the potential problems that would come with a shopping center development. He referred to the more than \$4 million value of the property claimed by the applicant and said he thought that this seemed like an exorbitant amount. He said he was totally opposed to a change in use.
- Clinton Pearson, 11076 SW Eschman Way, Tigard, OR 97223, testified citing his profession as an architect and that he had designed or participated in the design of retail stores including those in Bethany village and the Woodburn stores. He noted that he lives one block away. He advised that his wife was hit in a traffic accident on Scholls Ferry Road. He said he has a number of issues including concerns about traffic and another development similar to the types of development already present. He noted the need to respect homeowners in the area including not obstructing the views from their property. He noted the unpleasantness of looking at blank walls as the view from the residential property. He referred to the importance of pedestrian friendly conditions. He

noted that the property is now an empty lot connected to a wetlands area and requested a pedestrian friendly park connection. He referred to property to the west and his concerns about what might happen there.

- Holly Clark, 10855 SW 130<sup>th</sup> Avenue, Tigard, Oregon 97223, said she moved into a town home in Tigard and loves Tigard. She said the community offers open space and that she would hate to see it go away. She agreed with testimony about concerns for traffic impacts. She urged the City Council to consider exercising the right to eminent domain and to develop this land into a park.
- Alice Ellis Gaut, 10947 SW Chateau Lane, Tigard, OR 97224, suggested a review to determine whether Federal environmental regulations would be sufficient to warrant a reevaluation of consideration of a waiver of land use regulations. She also noted concerns about fuel seepage.
- Mr. Van responded to testimony in the following rebuttal points:
  - Mr. Grabhorn has owned this property since 1952. He has provided property for environmental uses and also dedicated property for right of way purposes.
  - Accommodations can be made to meet City code requirements for traffic, landscaping, and screening.
- Mr. Winger testified that Measure 37 has not been in effect for that long and advised that legal ramifications are still being worked through. He urged the City Council to use caution in making a change this early and also to consider environmental impacts, which have not been addressed.
- Ms. Ellis Gaut said she did not believe that Mr. Van's rebuttal comments were proper.
- Mayor Dirksen noted, for the record, receipt of testimony from Mr. Charles Wilson. Mr. Wilson's letter is on file in the City Recorder's office.

- f. Staff Recommendation: Planning Manager Bewersdorff noted staff also has concerns about traffic and environmental impacts. He referred to the site development review process, which would apply if the site were to be developed commercially. He further recommended that the waiver be granted to the person rather than to



run with the land as a permanent waiver and he referred to legal issues that might need to be resolved. Mr. Bewersdorff advised the City Council needed to make a decision on this matter noting that a 180-day time limit applies to this application.

City Attorney Ramis clarified that the main issue before the City Council is the transferability of the waiver. If the waiver is transferred and attached to the land, then the commercial zoning becomes a legal, permitted use. If the waiver is granted to the property owner, then the commercial zoning becomes a non-conforming use and is then subject to additional regulations.

g. Council discussion:

Councilor Wilson noted that this is the City's first Measure 37 claim and needs to be considered carefully because of precedence-setting ramifications. He noted the problem with the City's ordinance addressing Measure 37 insofar as it does not address how the value of the land is to be determined and that the market data provided by Mr. Grabhorn does not appear to be in line with comparable properties. He acknowledged that with regard to financial gain, Mr. Grabhorn has presented evidence that he could make more money on this property if it was developed as a commercial use. Councilor Wilson said he concurred with concerns about traffic impact and that this will be the biggest problem.

Community Development Director Hendryx noted how traffic impact fees are applied and Planning Manager Bewersdorff described the development review process and traffic impact fee assessment. There was reference to past review by the Planning Commission with regard to traffic impacts. In addition, there was reference to the City's ordinance relating to a property appraisal for a Measure 37 claim. Changes should be considered to clarify property appraisals and additional ways to recover costs of impacts.

Councilor Woodruff commented that Mr. Grabhorn has been the property owner for 53 years. He noted the City must make sure it adheres to the law. He pointed out that the testimony received tonight would be reviewed during the design process.

Councilor Sherwood advised that this is not a land use issue before the City Council; rather, it is a claim. She noted the City could not pay the \$4.6 million to purchase the property. She noted her disagreement with Measure 37. Councilor Sherwood also advised that when this is to be heard as a land use issue, property rights and

free enterprise must also be considered. She advised she would be in favor of granting the waiver to Mr. Grabhorn and not to the land.

Councilor Woodruff noted that this is private property and not subject to eminent domain. The property owner has the ability to make choices as to how the property is to be developed.

Mayor Dirksen commented on the passage of Measure 37 and noted, that it is likely that some who are present at tonight's meeting likely voted in favor of this measure. He suggested that the matter before the City Council at this time could be the "poster child" of what Measure 37 was attempting to address and it seemed to him literally impossible to make an argument against granting a waiver. In additional comments regarding voters approving Measure 37, Mayor Dirksen agreed that there were issues that needed to be addressed with regard to property rights; however, he believed that Measure 37 represented taking a sledge hammer approach to an issue that could have been corrected with a scalpel. He said that if a waiver is to be granted in this instance, not all regulations will be suspended in that the limitations and conditions for commercial zoning must apply and those will be addressed. He concurred that the waiver should be granted to the property owner.

- h. Mayor Dirksen closed the public hearing.
- i. Council consideration:

Motion Councilor Woodruff to adopt Ordinance No. 05-13. Councilor Sherwood seconded the motion.

City Recorder Wheatley read the following:

ORDINANCE NO. 05-13 – AN ORDINANCE ADOPTING FINDINGS TO GRANT A BALLOT MEASURE 37 WAIVER OF THE R-25 ZONING RESTRICTIONS TO BURTON GRABHORN FOR 10.5 ACRES AT THE INTERSECTION OF SCHOLLS FERRY ROAD AND 135<sup>TH</sup> AVENUE (LOT 63, HAWK'S BEARD TOWNHOMES, AND TAX LOT 14500, WCTM 1S133AC) TO ALLOW A COMMERCIAL SHOPPING CENTER, VARIOUS TENANTS/USES, AS WELL AS RETAIL SALES, VEHICLE FUEL SALES AND SIGNAGE OF THE C-G GENERAL COMMERCIAL ZONE SUBJECT TO APPLYING FOR AND RECEIVING SITE DEVELOPMENT REVIEW APPROVAL (M372005-00003)

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen: Yes

Councilor Harding:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff	Yes

8. **CONSIDER APPOINTING CRAIG PROSSER AS TIGARD CITY MANAGER**

Council members reviewed and commented on the public the process for selecting a new City Manager, which included a nationwide search. Members of the community assisted the City Council in the evaluation process and two candidates were clearly the top choices. Mr. Prosser served as interim City Manager for the last several months and he has the respect and admiration of people in government in the metro area. Mr. Prosser demonstrated to a citizen panel and the City Council that he deserved to be appointed to the City Manager position. The City Council was pleased that Mr. Prosser is willing to continue to serve.

Motion was made by Councilor Sherwood to appoint Craig Prosser as Tigard City Manager. Councilor Wilson seconded the motion.

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff	Yes

City Manager Prosser expressed appreciation to the City Council and the citizens of Tigard and noted his dedication to public service.

Mayor Dirksen administered the oath of office to City Manager Craig Prosser.

9. **LOCAL CONTRACT REVIEW BOARD (LCRB) ITEM**  
*Removed from the August 9, 2005 consent agenda for separate consideration* - **CONSIDER AUTHORIZING REIMBURSEMENT TO VENTURE PROPERTIES FOR WATERLINE CONSTRUCTION THROUGH SUMMIT RIDGE SUBDIVISION DEVELOPMENT**

Assistant Public Works Director Rager presented the staff report to the Local Contract Review Board (LCRB). LCRB rules provide that when a developer is required by condition of approval in a land use action to construct public improvements, the City can consider the developer a sole source and is not required to bid the work in a competitive process. Venture Properties was

conditioned to install an 18-inch public transmission line through their Summit Ridge Subdivision development that will support the 550-foot pressure zone improvements in that area. Venture Properties completed that work and the waterline is now ready for use.

The City will reimburse only for the cost of over-sizing. Mr. Rager provided an August 26, 2005, memorandum to the City Council explaining the LCRB rules that provide for this reimbursement process. A copy of this memorandum is on file in the City Recorder's office.

Mr. Rager described his misunderstanding about the reimbursement for over-sizing. The reimbursement amount of \$124,665.06 is the recommended amount regarding the costs incurred by the developer for over-sizing. A developer is to be reimbursed for costs added for a pipe size over 12 inches; however Condition No. 29 for the Summit Ridge Subdivision provided that the applicant would be reimbursed the difference in cost to upsize the line from 8 inches to 18 inches. Mr. Rager clarified (which is a change from the staff report on this item) that the expenditure related to this item can be shown in the 2004-05 fiscal year, since that is when the expense occurred.

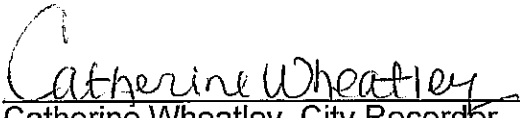
Motion by LCRB Chair Dirksen, seconded by Board Member Sherwood, to authorize reimbursement to Venture Properties for the construction of a large diameter transmission waterline through the Summit Ridge Subdivision development.

The motion was approved by a unanimous vote of LCRB members present:

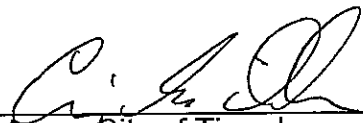
LCRB Chair Dirksen:	Yes
LCRB Board Member Sherwood:	Yes
LCRB Board Member Wilson:	Yes
LCRB Board Member Woodruff	Yes

10. COUNCIL LIAISON REPORTS: None
11. NON AGENDA ITEMS None
12. EXECUTIVE SESSION: Not held.

13. ADJOURNMENT: The City Council meeting adjourned at 10:16 p.m. A City Center Development Agency meeting was held immediately following the Council meeting.

  
Catherine Wheatley, City Recorder

Attest:

  
Mayor, City of Tigard

Date: 10.11.05